

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND
SPECIAL CITY COUNCIL MEETING
MINUTES – MARCH 26, 2003**

CALL TO ORDER

Chairperson/Mayor Kennedy called the meeting to order at 7:07 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Chang, Sellers and Chairperson/Mayor Kennedy
Absent: Agency/Council Member Tate

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairperson/Mayor Kennedy, Ryan Shepherd led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to Steve Woodson, Steve Fuentes, Stan Shepherd, David Masuda, Ethan Salzano, Ryan Shepherd, Stephen Woodson, Jr., and Shawn Fuentes in acknowledgement of the Heroism and Meritorious Action Awards that these Scouts received from the Boy Scouts of America for their heroic life saving efforts.

PRESENTATIONS

Rudy Padre, 3-Com Corporation, Santa Clara, presented Mayor Kennedy 3-Com Urban Challenge Grant Program for his endorsement of the program. He indicated that every six months, 3-Com donates approximately \$½ million to various entities such as local government and education, looking at ways to bridge the digital divide and bringing the benefits of technology to all citizens.

CITY MANAGER'S REPORT

City Manager Tewes informed the Council and the public that individuals who pay flood insurance would have their premiums reduced by 15% if their premiums are due on or after May 1, 2003. He said that in conjunction with the Santa Clara Valley Water District, the City participated in the community rating system, administered by the National Flood Insurance Program who have established goals for flood plane management and for educational efforts

which together with the Water District, the City has achieved. He stated that the Water District's effort has resulted in a Class 9 rating which translates into a 5% discount county-wide. He indicated that the City's additional flood plane management and education effort will result in a Class 7 rating that equates into a 10% reduction for a total of 15%, effective May 1. Morgan Hill residents paying flood insurance premiums due on or after May 1, 2003 will automatically receive the 15% reduction. Unfortunately, the reductions will not be prorated and that if a premium is due in April 2003, the individual will need to wait another year to receive the benefits. He was pleased that the Federal Emergency Management will be presenting a plaque to the City Council on May 7 to recognize the City's effort. He indicated that this is a project that the City has been work on for more than a year and that he was pleased that the City met the goals of the community rating system, and thereby reduce flood insurance premiums by 15%.

PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the floor to comments for items not appearing on this evening's agenda. No comments were offered.

CONSENT CALENDAR:

Redevelopment Agency Action

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board, on a 4-0 vote with Agency Member Tate absent, approved Consent Calendar Item 1 as follows:*

1. **FEBRUARY 2003 FINANCE & INVESTMENT REPORT**

Action: *Accepted and Filed Report.*

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, approved Consent Calendar Items 2 and 3 as follows:*

2. **2003 HAZARDOUS VEGETATION PROGRAM UPDATE**

Action: *Accepted Report.*

3. **APPROVE PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION STAKING FOR BUTTERFIELD BOULEVARD EXTENSION**

Action: *Authorized the City Manager to Execute Consultant Service Agreement with MH Engineering for Construction Staking and Construction Related Services for Butterfield Extension in the Amount of \$63,935.00, Subject to Review and Approval by City Attorney.*

City Council Action

CONSENT CALENDAR:

Mayor Pro Tempore Chang indicated that she resides within 500 feet of this project. She excused herself from the Council Chambers.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Tate absent, **Approved** Consent Calendar Item 4 as follows:*

4. ACCEPTANCE OF WELL ABANDONMENT PROJECT

Action: *1) **Accepted** as Complete the Well Abandonment Project in the Final Amount of \$31,175.00; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*

Mayor Pro Tempore Chang resumed her seat on the dais.

PUBLIC HEARINGS:

5. AMENDMENT OF MUNICIPAL CODE REGARDING ADOPTION OF THE UNIFORM CODES FOR FIRE – Ordinance 1612, New Series

City Attorney Leichter presented the staff report.

Chief Building Official Ford identified the specific changes proposed to the Fire Code. He stated that the proposed changes would bring the City in compliance with State law. He indicated that staff spoke with some of the developers about the proposed changes. He indicated that Santa Clara County Deputy Fire Chief Dirk Matter was in attendance to answer questions the Council may have.

Council Member Carr inquired whether the Chamber of Commerce had the opportunity to review the proposed changes and/or whether staff sought their input. He noted that staff indicated that the proposed changes would affect businesses rather than residential.

Chief Building Official Ford said that he spoke with commercial developers, not specifically the Chamber of Commerce. He informed the Council that most jurisdictions have already adopted this code and therefore, most manufacturers and contractors are aware of the specific conditions.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1612, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1612, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 15.44 (Fire Prevention Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AND ADOPTING CHAPTER 15.44 (Fire Prevention Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, THEREBY ADOPTING BY REFERENCE AS THE FIRE CODE OF THE CITY OF MORGAN HILL THE TEXT OF THE 2001 CALIFORNIA FIRE CODE, AND THE 2000 EDITION OF THE UNIFORM FIRE CODE AS PUBLISHED BY THE WESTERN FIRE CHIEFS ASSOCIATION, INCLUDING APPENDICES I-C, II-A, II-B, II-C, II-D, II-I, II-J, III-A, III-B, III-C, III-D, IV-A, V-A, VI-A, VI-B, VI-C AND VI-J, AS AMENDED BY THE STATE OF CALIFORNIA, EXCEPT SUCH PORTIONS AS ARE HEREINAFTER DELETED, MODIFIED OR AMENDED REGARDING FIRE PREVENTION AND TOXIC GASES** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Tate.*

OTHER BUSINESS:

6. SPECIAL EVENT INSURANCE FOR THE COMMUNITY AND CULTURAL CENTER

City Manager Tewes indicated that the Community and Cultural Center has been opened a few months and that City staff is experiencing growing/learning pains as it moves along. One of the things learned is that the facility, as designed, is a multi purpose community center and was not designed solely as a recreation facility or an event center. The combination of things, together with the City's pricing, operations and risk management policies have led some of the City's potential users to wonder whether or not they should use the facility. He indicated that tonight, staff is presenting one issue; risk management in regard to the extent to which insurance should be required, risk shared or shifted. He stated that in subsequent meetings, staff would be bringing other topics for Council review as well.

Recreation and Community Services Manager Spier presented the staff report, indicating that staff would be returning with a comprehensive report about some suggestions that staff believes would make utilization of the community center easier for staff as well as the end user in April. She informed the Council that staff is finding the center to be unique and requires learning skills that need to be applied as it is both a community and event center. Staff is finding that it has to combine a lot of expertise from neighboring/other cities in order to have an effective and efficient operation. Staff would like to focus on the area of insurance. She said that staff is finding that it is receiving quite a few request for the community center in the area of alcohol related events. She indicated that there are a couple of requirements that are out of the City's hand such as ABC requirements as they are state mandated. Staff will be returning to the Council regarding this issue next month. She said that the insurance requirements come from insurance companies and not from staff. She identified three options to address insurance

requirements: 1) continue with the current insurance policy (may result in the potential users conducting comparison shopping; is a cumbersome process with insurance response times varying; insurance companies will not quote prices). 2) City self funded - establishing deductible that is paid by user on a pro rated basis based on an estimate; funding a \$100,000 deductible for one claim and then ABAG would come in. This option allows staff to control fees and the City would be able to market the center to end users (marketing tool). This option would place all the risk on the City. If there is a single claim filed, it would wipe out the account. 3) Establish a policy for the Community and Cultural Center and its events. The City would pro rate the rates but indicated that staff has not found an insurance rider for this option. Staff would like the City to require insurance for all events that will serve alcohol, no matter the numbers in attendance at the event. She addressed the number of inquires, the number of users and projected/actual revenues from January to March 2003.

Council Member Chang inquired whether the Sports Management Group evaluations took into consideration the first 3-6 month revenue projection.

Ms. Spier responded that the Sports Management Group understood that the City would need some "ramp up time." She felt that they were aggressive in the numbers presented. She said that the numbers reflect that the use of the center is growing rapidly, but that the City can only handle so much coming through the door at any particular time.

Mayor Kennedy inquired whether the Sports Management Group assumed the first year would be less until the facility has been operating for a while. He noted that the numbers presented does not identify the projections six months from now. The numbers give the City the indication that the demand exists for weddings and quincineras and that the future looks bright in this respect.

Ms. Spier indicated that typically, by year three, the City would be at its full capacity, ironing out all issues and utilizing all rooms. It was her belief that the Sports Management Group based their projections on where the City would be. She clarified that the Sports Management Group were reflecting a percentage of the year.

Council Member Sellers acknowledged that the City would be slow ramping up at the front end. He recommended that the City monitor the numbers closely, indicating that he was not overly concerned as the center has been opened for 3 months. If in 6 months from now, the City is facing a similar deficit, there would be a significant cause for concern. He asked if it would be possible for the City to get insurance to cover the \$100,000 deductible.

Finance Director Dilles said that the City has been working with a broker used by ABAG. The broker thought that he had identified an insurance company but that it was not fruitful. The broker is continuing to look for an insurance carrier who would cover the \$100,000 deductible. He said that staff is trying to find someone who would insure the \$100,000 deductible so that the City would not be out the deductible. However, the City has not been able to find an insurance carrier for the deductible.

Council Member Sellers referred to option A. He inquired whether staff was concerned that the projections were not being achieved because of the insurance requirements.

Ms. Spier said that insurance is an issue for the end user. She said that the rates will remain the same with the current insurance carrier but that staff hopes that it will establish a relationship where it can understand their quotes and be able to estimate insurance costs. She indicated that staff is encountering the same problems for outdoor events at city parks if alcohol is to be served.

City Attorney Leichter said that City Attorney for the City of Sunnyvale was surprised to learn that they do not require additional insurance for the use of their facility. This is a decision that they are revisiting at this time and that they would more than likely start to require some type of insurance coverage. She indicated that this is a risk assessment balance for the Council and its comfort level given the tightened insurance market as it has hit the users as well as the City. She said that staff is finding it difficult to find the correct insurance products. She said that the City requires users to sign a hold harmless indemnity clause that states that if anything happens, the user agrees to hold harmless and indemnify and defend the City. She said this clause is only as good as the personal asset of the person who signs the paper. She stated that it also places the City in a position to go against the individual's asset. She said that oftentimes, homeowners insurance will not cover these types of events. She would not put a lot of full faith and credit in the clause. Regarding the self insured aspect, if the City establishes the \$100,000 deductible, it was her understanding that if five individuals were injured at a party and all file claims, the City is out \$100,000 for each occurrence before ABAG comes (e.g., insuring when the incident reaches \$500,000). She indicated that the City has a claim made basis per occurrence.

Finance Director Dilles clarified that ABAG would insure per occurrence. He noted that the City would have \$100,000 on each claim. The City could have the exposure of this limit in a worse case scenario. He indicated that the City has \$10 million of ABAG coverage.

City Manager Tewes informed the Council that estimated revenues for the center is \$750,000 for a full year.

Mayor Pro Tempore Chang inquired as to the affect of changing the City's insurance policy. She felt that if the City could increase the use of the center to 100% from the current 31% it would be worth taking the insurance chance. If the City is only earning \$50,000 because the City changed the insurance policy, she may not support the change.

Ms. Spier indicated that she does not have a good response for Mayor Pro Tempore Chang because the City does not have enough history at the community center. She said that the City does not have anything extra to offer end users from those of other facilities. She noted that the City can charge insurance for the use of the community center and that a user will go to another facility in town that includes the insurance rate.

Mayor Kennedy felt that the community center has more to offer than other comparable facilities that seat the same number of people.

Ms. Spier indicated that she was addressing the typical wedding/reception and not the special use needs. She stated that the Sports Management Group based their fees on the wedding receptions, retirement parties, etc. She was not able to tell whether providing self insurance would allow 100% use of the facility.

Mayor Pro Tempore Chang indicated that she received an insurance quote for a smaller, public use facility for \$1 million liability insurance per occurrence and \$3 million aggregate. She recommended that the City investigate other insurance companies.

Mayor Kennedy inquired whether the City is limiting its insurance to ABAG.

Finance Director Dilles stated that he spoke to a couple of local real estate brokers and that what he has heard is that there are companies who will write special events insurance. However, the number of insurances that offer this particular type of insurance are leaving the state.

Mayor Kennedy stated that it was his recommendation that the insurance be left as is because Ms. Spier will be presenting a more in depth presentation on the community center next week. In the meantime, staff can investigate other insurance companies/options, including local real estate brokers and that staff not limit itself to the ABAG program.

Council Member Carr felt that the City needs to make an insurance change. If the City is able to change the insurance policy or how it views the City's insurance policy, the likelihood there would be an increase in rentals that would make it an acceptable risk to the City. He felt that the City could come up with something that would be accommodating and an acceptable risk.

City Manager Tewes said that the Council has requested additional information, noting that the staff report would need to be completed tomorrow. He said that staff would appreciate a chance to return to the Council in mid April.

Mayor Kennedy said that he would support allowing staff to take the appropriate amount of time needed to gather information. He said that this is a concern to everyone and that the City does not want to lose events in the community because the City is being too cautious, too protective and unwilling to take any risks; on the other hand, the City has to be prudent.

Ms. Spier informed the Council that one of the reasons that the insurance issue was brought before the Council this evening was to get a sense from the Council. She said that there may be creative opportunities that staff could present to the Council that would still pass the risk on to some other entity such as an RFP for the kitchen with a caterer insuring the event and taking care of the ABC requirements.

Mayor Pro Tempore Chang inquired whether the City is looking for liability insurance.

Finance Director Dilles responded that the City is looking for liability insurance as the City is trying to cover its risk if somebody gets hurt and sues the City. The City wants to shift the risk so that it does not come out of the City's pocket.

Council Member Sellers felt that there is a very fine line between the City being competitive with the unique product that it has versus subsidizing itself where it is taking business away from other entities in Morgan Hill. He said that when the Council performed the projections, it was with the understanding that the City would be adding to what was available in the community. He wanted to make sure the City stays in this arena and not cross over where the City is taking

business away that would otherwise go to other entities.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Actions: *By consensus, the City Council: 1) **received** the report; 2) **Provided** Direction to Staff as to Insurance Risk Level and Budget Impact Acceptable to City Council; and 3) **Directed** staff to return with additional information.*

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Agency Council/City Attorney Leichter announced the following closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name/Number: Santa Teresa Citizen Action Group et al. v. California Energy Commission (California Third District Court of Appeals, C041090); Santa Teresa Citizen Action Group et al. v. Hearing Board of the Bay Area Air Quality Management District (San Francisco Superior Court, CPF-02-50164); Santa Teresa Citizen Action Group et al. v. Calpine Corporation (Ninth Circuit Court of Appeals, 01-701611).

3.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6

Agency Negotiators: Ed Tewes, City Manager; Helene L. Leichter, City Attorney; Mary Kaye Fisher, Human Resources Director

Employee Organization: AFSCME Local 101
Morgan Hill Community Service Officers Association
Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker
Government Access Technician
Maintenance Worker Assistant
Utility Worker Assistant

Executive Management Group 1-A
Chief of Police
Director of Business Assistance & Housing Services
Director of Community Development
Director of Finance
Director of Public Works/City Engineer
Human Resources Director
Recreation and Community Services Manager
Assistant to the city Manager
Council Services and Records Manager

Middle Management Group 1-B

Police Captain
Deputy Director of Public Works
Assistant City Attorney
Assistant Director of Finance
Chief Building Official
Human Resources Supervisor
Planning Manager
Senior Civil Engineer
Budget Manager
Business Assistance and Housing Services Manager
Police Support Services Supervisor
Senior Planner
Project Manager
Utility Systems Manager
Recreation Supervisor
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C

Administrative Analyst
Secretary to the City Attorney
Accounting Technician
Human Resources Assistant

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to closed session at 8:45 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 10:15 p.m.

CLOSED SESSION ANNOUNCEMENT

Agency Council/City Attorney Leichter announced no reportable action taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were noted.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 10:16 p.m.

MINUTES RECORDED AND PREPARED BY

IRMA TORREZ, Agency Secretary/City Clerk